

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

77-1221

B
MS

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

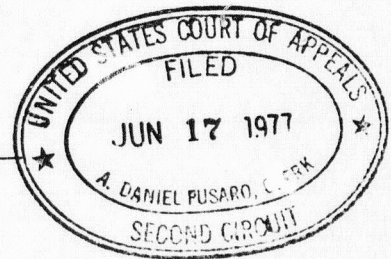
Appellee,

-against-

FRANCIS E. KING,

Appellant.

*Appeal from the United States District
Court for the Eastern District of New York*



Appellant's Appendix

FRANCIS E. KING
Pro Se

177 White Plains Road
Tarrytown, N.Y. 10591

PAGINATION AS IN ORIGINAL COPY

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Docket Entries	1a
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Charge of the Court	16a

REAL

JURY - U.S. District Court
JUDGE MAGISTRATE Assigned U.S.

76 CR 482

Case Filed
Mo 7 28

WEINSTEIN, J.
76 482

0715
X 207

Dis. Sentence

KING, FRANCIS E.

(LAST FIRST MIDDLE)

ORIGINAL COUNTS 6

U.S. TITLE/SECTION

26:7206(1), 7203, Did wilfully & knowingly
7201 make a false income tax
return.

U.S. MAG
CASE NO

BAIL • RELEASE

AMT ☐ Fugitive
Denied ☐ Set ☐ Pers Recog
\$. 000 ☐ PSA
Date ☐ Conditions
☐ 10% Deposit
☐ Surety Bond
☐ Bail Not Made ☐ Collateral
☐ Status Changed (See Docket) ☐ 3rd Ptry Cust ☐ Other

II. KEY DATES & INTERVALS

ARREST or

U.S. Custody Began

Summons Served

First Appearance

INDICTMENT

High Risk Date

Information 7/28/76

Indict. Waived

In Charging District

Superseding
☐ Indict/Info ☐

ARRAIGNMENT

7/30/76

1st Plea

Final Plea

Trial Set For

NG ☐ G ☐ NOL

G. Plea W/Drawn

NG ☐ G ☐ NOL

TRIAL

Voir Dire

11/22/77

Trial Began

11/20/77

Trial Ended

SENTENCE

Disposition of Charges

4/18/77

☒ Convicted

☐ Acquired

☐ Dismissed

☐ On Government's Motion

☐ On All Charges

☐ On Lesser Offenses

☐ WOP: ☐ WP

MAGISTRATE

Search Warrant

Issued

Return

Summons

Issued

Served

Arrest Warrant Issued

COMPLAINT

OFFENSE

(In Complaint)

DATE

INITIAL/NO.

INITIAL APPEARANCE DATE

PRELIMINARY EXAMINATION

OR

REMOVAL HEARING

☐ WAIVED ☐ NOT WAIVED

☐ INTERVENING INDICTMENT

Date Scheduled

Date Held

Tape Number

INITIAL/NO.

OUTCOME:

☐ DISMISSED

☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT

☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

ATTORNEYS

Defense ☒ CJA ☐ Ret ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD

U.S. Attorney or Ass:

Thomas P. Puccio

Frederick H. Cohn

299 Broadway, New York N.Y. 10007

(212) 349-7755

Show last names and suffix numbers of other defendants on same indictment/information

DATE

DOCUMENT NO

PROCEEDINGS

EXCLUDABLE DELAY

7/28/76

Before DOOLING, J. - Indictment filed.

7/30/76

Before WEINSTEIN, J. - Case called. Deft present without
counsel- Victor Levin is assigned as counsel for deft.
Order to be submitted. Deft arraigned & enters a plea of
not guilty. Pre-Trial conference held and concluded. Deft
waives the speedy trial rule- Bail set at \$5,000.00 P.R.
Trial set for 11/15/76 at 10:00 a.m.

11-8-76

Letter to Judge Weinstein dated 11-5-76 from Cohn that Mr. Levin
has requested that Modner ask Slotnick to consider being
substituted for him.

11-8-76

Before Weinstein, J.- Case Called. Deft. & Counsel present.
Cohen is assigned as counsel for deft. Mr. Levin is relieved.
All motions to be made by 12-6-76. Trial set for 1-10-77.

11-9-76

Letter received from Deft's Atty. Cohn requesting an adjournment
of Trial in order to adequately prepare. (forwarded to Chambers)
Filed.

FORM AO-256

IV. PROCEEDINGS (continued)		PAGE TWO		V. EXCLUDABLE DELAY			
DATE	DOCUMENT NO.	and consented		Initial Actual (a)	Start Date End Date (b)	LT Code (c)	Total Days (d)
11/9/76		By WEINSTEIN, J.- Ordered that Frederick H. Cohn be appointed counsel for deft. Order dated 11/8/76.					
11/9 /76		Before WEINSTEIN, J. - Case called. Motion by the City Corporation counsel to quash governments supoena for income tax returns, etc. - argued -- Decision reserved - 1 week for breifs by city government and 1 week following for Federal Government.					
11-15-76		Memorandum of Law filed on behalf of Dept. of Finance of the City of New York.					
11-23-76		Memorandum filed received from Chambers dated 11-19-76 re adjourning date of sentence of the deft to Dec 2, 1976					
11-23-76		Letter filed dated Nov. 22 received from Chambers from Edward Korman, Chief, Asst. US Atty.					
11-29-76		Letter filed dated Nov. 23, 1976 received from Chambers from counsel Frederick H. Cohn re motion to quash subpoena etc Counsel for deft has 2 weeks to submit briefs. Clerk to notify all counsel. So Ordered by Judge Weinstein (see notation on bottom of letter)					
12-3-76		Letter filed dated Nov. 29, 1976 recvd from Chambers from Edward Korman, Chief, Asst. US Atty.					
12-7-76		Notice of motion to preclude and dismiss & Memo of Law filed in support of motion (forwarded to Chambers)					
12-8-76		Letter filed dated 12-6-76 received from Chambers from Asst US Atty Puccio					
12-13-76		Notice of Deft's. Memorandum of Law in Support of Motion to Quash filed and forwarded to Chambers.					
12-13-76		2 letters filed received from counsel for the deft Frederick Cohn. (re motion to dismiss the indictment etc) Motion will be heard on Jan. 5, 1977 at 9:30 am. Clerk to inform counsel. So Ordered. See notation of Judge Weinstein on bottom of letter)					
12-21-76		Letter dated 12-21-76 from Mr. Puccio to Judge Weinstein filed.					
12-21-76		Before WEINSTEIN, J.-Case called-Deft and counsel present-Deft's motion to dismiss the indictment is denied-Deft's motion to preclude testimony is denied-Pre-trial set for 12-27-76 at 2P.M..					
12/27/76		Before WEINSTEIN, J.- Case called. Deft not present. Counsel present. Pre-Trial conference adjd to 1/3/77 at 2:00 p.m.					
12-29-76		By Weinstein, J.- Memorandum and Order filed denying the motion to quash the subpoena.					
1-3-77		Before Weinstein, J.- C se Called. Deft. not present. Counsel present. Pre-trial conference held and concluded. Trial set for 1-10-77 at 9:30 A.M.					

FINE AND RESTITUTION PAYMENTS					
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

B

KING, FRANCIS E.

76CR 482

Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1-10-77	(Document No.) Copy of Letter filed addressed to Fredrick Cohn from Thomas Puccio advising that an ex-parte application was made by the Judge (Weinstein) in connection with the case.				
1-10-77	Affidavit in Support of an Application under F.R.C.P. filed.				
1-10-77	Before Weinstein, J.- Case Called. Deft. & Counsel present. Deft's. motion to dismiss on ground of venue argued. Decision reserved on counts 2 and 3. Motion denied on all other counts. Case adjd. to 1-12-77 at 2:30 P.M. for Trial.				
1-12-77	Before Weinstein, J.- Case Called. Deft. & Counsel present. Trial ordered and begun. The Jurors were selected and sworn. Govt. opens. Deft. opens. Trial continued 1-13-77 at 9:45 A.M.				
1-13-77	Before WEINSTEIN J - case called - deft & counsel F. Cohn present - trial resumed - trial contd to 1-14-77				
1-14-77	Affidavit of Joel Cohen filed (received from Chambers)				
1-14-77	Affidavit of Francis King filed. (for daily copy without funds, etc) Motion for daily copy granted - So ordered by Judge Weinstein -(see Judge's notation on 2nd page of affidavit) Reporters sent copy of Order.				
1-14-77	Before Weinstein, J.- Case Called. Trial continued to 1-17-77 at 9:30 A.M.				
1-17-77	Voucher for Compensation for Expert Services filed and forwarded to Washington for Payment.				
1-17-77	Before Weinstein, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 1-18-77 at 9:30 A.M.				
1-18-77	Before Weinstein, J.- Case Called. Deft. & Counsel present. Trial resumed. Govt. rests, Trial continued to 1-19-77 at 10:00 A.M.				
1-18-77	Defendant's Memorandum of Law on Venue filed and forwarded to Chambers.				
1/19/77	Before WEINSTEIN, J. - Case called. Deft & Counsel present. Trial resumed. Govt and deft rests. Jury retires for deliberations. (6) orders of sustenance signed. Trial continued to 1/20/77 at 9:30 a.m.				
1/19/77	By WEINSTEIN, J. - (6) orders of sustenance signed, and filed, for lunch, coffee, cake, dinner, transportation, lodging and breakfast.				
1-20-77	Before WEINSTEIN J - case called - deft & counsel Frederick Cohn present - Jury resumes deliberations at 9:30 am. Orders of sustenance signed for lunch, sandwiches, etc. Jury returns and renders a verdict of lack of venue as to counts 2 and 3 - counts 2 and 3 dismissed - Jury polled - Jury resumes deliberations as to counts 1, 4, 5 & 6 - Jury renders a verdict of guilty as to counts 1, 4, 5 & 6 - jury polled and discharged - defts motion to set aside the verdict is				

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

76CR 482

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELA			
		(a)	(b)	(c)	(d)
	(Document No.)				
	denied. Bail contd. Trial concluded - sentence adjd without date.				
1-20-77	7 stenographers transcripts filed (one dated Jan. 10, 1977; one dated Jan. 12, Jan. 13, Jan. 14, Jan. 17, Jan. 18 and one dated Jan. 19, 1977 respectively)				
1-20-77	Consent stipulation filed (received from Chambers) re Exhibits etc (see stipulation)				
1-25-77	Stenographers transcript filed dated 1-20-77				
1-25-77	Voucher for expert services filed and forwarded to Admin. Office for payment				
1-27-77	Writ of Habeas Corpus returned and filed. Executed.				
2-7-77	Letter filed received from Chambers from Frederick Cohn, counsel for deft, for permission to interview jurors etc. No application is necessary. So Ordered by Judge Weinstein (see notation on bottom of letter)				
2/10/77	Letter filed to Judge Weinstein from AUSA - Puccio dtd 2/8/77, re: proposed interview of jurors. (see notation on bottom of letter - The Clerk will take no further action-so ordered).				
2/15/77	Letter filed dtd 2/14/77 to Judge Weinstein from AUSA Puccio, re: application to the Court for permission to interview jurors in this case.				
3-29-77	Letter filed received from Chambers dated 3-29-77 from attorney for the deft Frederick H. Cohn, Esq. Order filed signed by Judge Weinstein on page 4 of attys letter. These papers were delivered by hand at 4:20 PM on March 29. The court is not inclined to grant a further delay. It sees no reason why evidence on these issued should not be presented on April 1, 1977. The court has no objection to a co-counsel being present - Clerk shall inform the parties by telephone today, March 29. So Ordered. Parties notified.				
3-30-77	Letter filed received from Chambers dated 3-29-77 from Thomas Puccio, Strike Force Atty in Charge re certain materials, etc. See Judge's notation on bottom of letter; These materials are all available in my office. Clerk shall advise the U.S. Atty. to make arrangements with my secretary. So Ordered by Judge Weinstein.				
4.1.77	Before Weinstein, J.- Case Called. Deft. & Counsel present. Deft's. motion to set aside the verdict is denied. Deft's. motion for the Court to recuse himself from sentencing argued and denied. Deft. to proceed immediately for mandamus. Sentence adjd. to 4.11.77 at 2:30 P.M.				
4-6-77	Transcript filed dated 4-1-77				
4/18/77	Before Weinstein, J--case called deft & counsel present deft is sentenced to 3 years imprisonment on count 1 and 3 years on count 6: 5 years on count 5 and 1 year on count 4, each count to run concurrently, deft is fined \$5,000.00 on count 1, \$5,000.00 on count 6, \$10,000.00 over.....				

AO-257

(Cont'd) 78

Interval
(per Section 11)

Start Date
End Date

Ltr. Total
Code Days

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

5A

KING, FRANCIS E

76
Yr.

482
Docket No.

1
Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	(Document No.)				
4/18/77	on count 5 and \$10,000.00 on count 4 for a total of \$30,000.00 debt is granted the right to appeal in forma pauperis-bail cont'd pending appeal.JLJ Judgement and committment filed.JLJ Certified copies to marshall.JLJ				
4.25.77	Voucher for Compensation for Expert Services filed and forwarded to Washington for Payment.				gp
4-25-77	Mandate filed received from the Court of appeals denying petition for writ of mandamus and further ordered that a stay pending determination of said petition be denied. rs				
4-27-77	Notice of appeal filed in forma pauperis(authorized by Judge Weinstein 4-27-77)see notation on appeal form. Docket entries and duplicate of Notice mailed to the court of appeals.				

A TRUE COPY
ATTEST
DATED 5-9-77 1977
LEWIS ORGEL
CLERK
BY [Signature]
DEPUTY CLERK

E

DOT:11P:1ag
F.#763,058

ARD
DNR

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA

- against -

FRANCIS E. KING,

Defendant.
----- X

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

JUL 28 1976

TIME A.M.
P.M.

Cr. No.
(26 U.S.C., Section 7206(1);
26 U.S.C., Section 7203;
26 U.S.C., Section 7201)

76CR 482

The Grand Jury Charges:

COUNT ONE

On or about the 15th day of April 1971, in the Eastern District of New York, FRANCIS E. KING, the defendant, a resident of Commack, New York, did wilfully and knowingly make and subscribe a 1970 United States Individual Income Tax Return, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which income tax return he did not believe to be true and correct as to every material matter, in that the said return reported adjusted gross income in the amount of Sixteen Thousand Eight Hundred Sixty

Three Dollars (\$16,863.00), whereas as he then and there well knew and believed, his adjusted gross income for the calendar year 1970 was substantially in excess of Sixteen Thousand Eight Hundred Sixty Three Dollars (\$16,863.00). (Title 26, United States Code, Section 7206(1)).

COUNT TWO

The Grand Jury Further Charges:

During the calendar year 1971, FRANCIS E. KING, the defendant, a resident of Commack, New York, had and received a gross income of approximately Thirty Two Thousand Six Hundred Twenty Dollars and Fifty Two Cents (\$32,620.52); that by reason of such income he was required by law following the close of the calendar year 1971

- 2 -

and on or before April 15, 1972 to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn at Brooklyn, New York, in the Eastern District of New York, or to the Director of the Internal Revenue Service Center, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did willfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue or the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States. (Title 26, United States Code, Section 7203).

COUNT THREE

The Grand Jury Further Charges:

During the calendar year 1971, FRANCIS E. KING, the defendant, a resident of Commack, New York, had and received a taxable

income of approximately Twenty Three Thousand Six Hundred Ninety Seven Dollars and Sixty One Cents (\$23,697.61); that upon said taxable income he owed to the United States of America income tax in the amount of approximately Five Thousand Five Hundred Sixty Three Dollars and Twenty Four Cents (\$5,563.24); that he was required by law on or before April 15, 1972 to make an income tax return to the Internal Revenue Service, and to pay such income tax; that well knowing the foregoing facts, the said FRANCIS E. KING, on or about April 15, 1972, in the Eastern District of New York, did wilfully and knowingly attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make such income tax return to the said Internal Revenue Service, and by failing to pay said Internal Revenue Service said income tax and by concealing and attempting to conceal from all proper officers of the United States of America his true and correct taxable income. (Title 26, United States Code, Section 7201).

COUNT FOUR

The Grand Jury Further Charges:

During the calendar year 1973, FRANCIS E. KING, the defendant, had and received a gross income of approximately Seventy Eight Thousand Three Hundred Twenty Two Dollars and One Cent (\$78,322.01); that by reason of such income he was required by law following the close of the calendar year 1973 and on or before April 15, 1974 to make an income tax return to the Director of the Brookhaven Internal Revenue Service Center, Holtsville, New York, in the Eastern District of New York, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States. (Title 26, United States Code, Section 7203).

COUNT FIVE

The Grand Jury Further Charges:

During the calendar year 1973, FRANCIS E. KING, the defendant, had and received a taxable income of approximately Seventy Three Thousand Two Hundred Eighteen Dollars and Forty Cents (\$73,218.40); that upon said taxable income he owed to the United States of America income tax in the amount of approximately Twenty Nine Thousand Four Hundred Ninety Dollars and Twelve Cents (\$29,490.12); that he was required by law on or before April 15, 1974 to make an income tax return to the Director of the Brookhaven Internal Revenue Service Center, Holtsville, New York, in the Eastern District of New York, and to pay such income tax; that well knowing the foregoing facts, the said FRANCIS E. KING, on or about April 15, 1974, in the Eastern District of New York, did wilfully and knowingly attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make such income tax return to the said Internal Revenue Service, and by failing to pay said Internal Revenue Service said income tax

and by concealing and attempting to conceal from all proper officers of the United States of America his true and correct taxable income. (Title 26, United States Code, Section 7201).

COUNT SIX

The Grand Jury Further Charges:

On or about the 15th day of April 1974, FRANCIS E. KING, the defendant, did wilfully and knowingly make and subscribe an Application for Extension of Time to File United States Individual Income Tax Return (Form 2688) for the taxable year 1973, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Director of the Brookhaven Internal Revenue Service Center, Holtsville, New York, in the Eastern District of New York, which Application for Extension of Time

to File he did not believe to be true and correct as to every material matter, in that the said Application stated that he had filed an individual income tax return on time (including any authorized extension) for each of the three years immediately preceding the year 1973, whereas as he then and there well knew and believed, he had not filed an individual income tax return for the year 1971. (Title 26, United States Code, Section 7206(1)).

A TRUE BILL.

Roberto Sabella

FOREMAN.

David G. Trager

DAVID G. TRAGER
United States Attorney
Eastern District of New York

11A

United States of America vs.

M'FILMED

United States District Court for

EASTERN DISTRICT OF NEW YORK

DEFENDANT

FRANCIS E. KING

DOCKET NO. ➤

76 CR 482

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
4	18	77

COUNSEL

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Frederick Cohn, Esq.
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged

☒ GUILTY. Counts 1,4,5, and 6

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-26, U.S.C. Sect. 7206 (1) and 7203 in that on or about April 15, 1971, during the calendar year 1973 and on or about April 15, 1974, the defendant did wilfully and knowingly make and subscribe a U.S. Individual Income Tax Return for the years of 1970 and 1973, which was verified by a written declaration and it was made under the penalties of perjury and was filed with the Internal Revenue Service, which returns were false, and did apply for the extension of time to file, which application he did not believe to be true and correct as to every material matter.

The court asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ APR 20 1977 ★
TIME A.M. 6 P.M.

15A

SENTENCE
OR
PROBATION
ORDER

3 years imprisonment on count 1; 3 years imprisonment on count 6;
5 years imprisonment on count 5 and 1 year imprisonment on count
4 - each count to run concurrently. Defendant is fined \$5,000.00
on count 1, \$5,000.00 on count 6, \$10,000.00 on count 4, and
\$10,000.00 on count 5 , for a total of \$30,000.00.

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

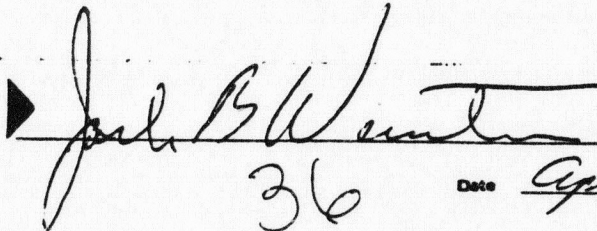
The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver
a certified copy of this judgment
and commitment to the U.S. Mar-
shal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate


36

Date

April 19, 1977

1
2 THE COURT: Let me remind you again, Ladies and
3 Gentlemen, that the only one on trial is Mr. King, not
4 Mrs. King or anyone else. You understand that? He is
5 not on trial for anything else he may or may not have
6 done, except the particular charges involved in the
7 case.

8 I'm going to tell you what the law is. I want
9 you to follow my instructions. You are the exclusive
10 determiners of the fact.

11 I have no view as to the guilt or innocence of
12 this defendant. If I have said anything or done any-
13 thing that gave you the impression that I had a view
14 or indicated in any way what that view was, put it out
15 of your mind because I really do not have any view of
16 his guilt or innocence. That is entirely for you to
17 decide. All I want to see done here is that he and
18 the Government get a fair trial in accordance with the
19 law and the evidence that you have heard.

20 In a number of cases I asked you to strike
21 evidence. Ignore that evidence. Do not be influenced
22 by any of the rulings that I made. They were based on
23 technical matters of the law of evidence that are of
24 no concern to you.

25 The fact that there is a prosecution brought in

1
2 the name of the United States is entitled to no weight
3 at all. Everybody is equal in this court.

4 The fact that there is an indictment is en-
5 titled to no weight. It is just a charge, not evidence.
6 You have to decide on what you heard and what you will
7 see in these exhibits.

8 This defendant has pleaded "Not guilty." The
9 Government has the burden of proving guilt beyond a
10 reasonable doubt with respect to every element of each
11 of the crimes that he is charged with committing.

12 A defendant does not have to prove his innocence.
13 He does not have to submit any evidence at all. A
14 defendant does not have to take the witness stand and
15 if he chooses not to testify, you must draw no infer-
16 ence against him because he so chooses.

17 The matter of his failure to take the witness
18 stand should be put out of your mind and should not be
19 considered by you. This defendant is presumed to be
20 innocent and a presumption of innocence remains with
21 him and with you in your deliberations right up to the
22 end.

23 A reasonable doubt means a doubt sufficient to
24 cause a prudent person to hesitate to act in the most
25 important affairs of his or her life. Reasonable doubt

1
2 may result either from the evidence produced by either
3 side or from the failure to produce evidence.

4 Finding a person guilty of a crime or crimes is
5 ious. You will consider that in determining whether
6 not you have a reasonable doubt, but if you are
7 convinced beyond a reasonable doubt that the defendant
8 is guilty of one or more of the crimes he is charged
9 with committing, you will find him guilty without
10 respect to any questions or sympathy. He is charged
11 with six crimes ir counts. Each of them has to be
12 considered separately. You may find him guilty of some,
13 not guilty of some, not guilty of all or guilty of all,
14 depending upon your view of the evidence.

15 I am going to give you the indictment. You will
16 have it before you because it is confusing to try to
17 keep all of this in mind. There are different counts
18 and different theories. It is difficult.

19 Counts one and six, the first and last count,
20 are similar with respect to the law that applies. So,
21 I am going to read them first. They are the false
22 statement counts.

23 The first count reads as follows:

24 "On or about the 15th day of April, 1971, in
25 the Eastern District of New York, Francis E. King, the

1
2 defendant, a resident of Commack, New York, did wil-
3 fully and knowingly make and subscribe a 1970 United
4 States Individual Income Tax Return, which was veri-
5 fied by a written declaration that it was made under
6 the penalties of perjury and was filed with the Internal
7 Revenue Service, which income tax return he did not
8 believe to be true and correct as to every material
9 matter, in that the said return reported adjusted gross
0 income in the amount of Sixteen Thousand Eight Hundred
1 Sixty Three Dollars (\$16,863.00), whereas as he then
2 and there well knew and believed, his adjusted gross
3 income for the calendar year 1970 was substantially in
4 excess of Sixteen Thousand Eight Hundred Sixty Three
5 Dollars (\$16,863.00)."

6 The sixth or last count reads as follows:

7 "On or about the 15th day of April 1974, Francis
8 E. King, the defendant, did wilfully and knowingly
9 make and subscribe an Application for Extension of Time
0 to File United States Individual Income Tax Return for
1 the taxable year 1973, which was verified by a written
2 declaration that it was made under the penalties of
3 perjury and was filed with the Director of the Brook-
4 haven Internal Revenue Service Center, Holtsville, New
5 York, in the Eastern District of New York which

1
2 Application for Extension of Time to File he did no:
3 believe to be true and correct as to every material
4 matter, in that the said application stated that he
5 had filed an individual income tax return on time,
6 including any authorized extension, for each of the
7 three years immediately preceding the year 1973, where-
8 as as he then and there well knew and believed, he had
9 not filed an individual income tax return for the year
10 1971."

11 If that is true, this would constitute a viola-
12 tion of section 7206(1) of title 26, United States
13 Code. That statute reads as follows:

14 "Whoever willfully makes and subscribes any
15 return, statement, or other document, which contains
16 or is verified by a written declaration that it is
17 made under the penalties of perjury, and which he does
18 not believe to be true and correct as to every material
19 matter shall be guilty of a crime."

20 If you read that statute in connection with
those charges, you will find that as to each charge
the Government has to prove beyond a reasonable doubt
four elements.

First, that the document was subscribed by the
defendant.

1
2 Second, that it included a written statement
3 that it was made under the penalties of perjury.

4 Third, That the defendant signed these docu-
5 ments knowing it not to be true or correct as to a
6 substantial matter.

7 Fourth, that this act was done willfully. If
8 there is a reasonable doubt as to any of those, he is
9 not guilty.

10 There seems to be no dispute about the first
11 two elements with respect to either one of those
12 charges. It is uncontested that the defendant signed
13 the return and the request for an extension in question
14 and that they included the statement that they were
15 made under the penalty of perjury. You can look through
16 the documents.

17 As to the third element, the Government in the
18 first count contends that the tax return for 1970 was
19 false and incorrect in that it understated adjusted
20 gross income for that year.

21 In count six, the government claims that, while
22 Mr. King said in the application for an extension that
23 he had filed an income tax return on time for 1971, he
24 had not in fact done so.

25 The Government must prove these allegations, and,

1
2 to satisfy this third element, the Government must
3 also prove that the defendant acted knowingly at the
4 time he signed the return and the application.

5 A person does not knowingly do an act which the
6 law forbids if the act was done because of a mistake,
7 misunderstanding or any other innocent reason. It
8 does not matter whether the mistake was one of law or
9 one of fact. In either case it would be a mistake
10 preventing guilt. To be guilty of a knowing act it
11 must be an act done deliberately and in addition with
12 a bad purpose here to attempt to deceive the Govern-
13 ment.

14 You all know people make mistakes on their
15 income taxes. I am sure some of you have done it from
16 time to time, but that is not what this is about. It
17 has to be a deliberate, willful attempt, not based on
18 any mistake.

19 The fourth element, therefore, is that the
20 defendant acted willfully and to decide whether this
21 has been shown, you must consider the evidence as to
22 Mr. King's state of mind when he signed the statement.
23 You must find both the action and the intent.

24 In this connection you may consider whether the
25 discrepancies between what was reported and what should

1
2 have been reported, if any, was substantial and the
3 source of the income not shown, if any, and all the
4 other related circumstances.

5 An act or a failure to act is willful if the
6 defendant acts voluntarily and intentionally, and with
7 the specific intent to do something the law forbids.
8 Here, the specific intent would have to be to deceive
9 the Government. We cannot look into a person's mind
10 and certainly cannot look into a person's mind years
11 later. You will have to consider all of the circum-
12 stances as you heard them and draw the inferences that
13 you think are reasonable in the light of your exper-
14 iences as reasonable people.

15 The fact that the Government discovered the
16 falsity of the tax return or application, if there was
17 any falsity, and may have been able by reason of that
18 discovery to avoid a monetary loss, is not defense to
19 the charge contained in the indictment. Those charges
20 are not that the Government was defrauded of tax, but
21 their essential false statement charges. It does not
22 make any difference that the defendant did not obtain
23 any benefit, that is, that he ultimately paid the tax
24 and he even paid more than the tax in the way of
25 interest and penalties.

Counts two and four charge a failure to file a tax return, timely failure.

Count two alleges as follows:

During the calendar year 1971, Francis E. King, the defendant, a resident of Commack, New York, had and received a gross income of approximately Thirty Two Thousand Six Hundred Twenty Dollars and Fifty Two Cents (\$32,620.52); that by reason of such income he was required by law following the close of the calendar year 1971 and on or before April 15, 1972 to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn at Brooklyn, New York, in the Eastern District of New York, or to the Director of the Internal Revenue Service Center, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did willfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue or the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States." That is count two.

Count four says:

12 1 "During the calendar year 1973, Francis E. King,
2 the defendant, had and received a gross income of
3 approximately Seventy Eight Thousand Three Hundred
4 Twenty Two Dollars and One Cent (\$78,322.01); that by
5 reason of such income he was required by law following
6 the close of the calendar year 1973 and on or before
7 April 15, 1974 to make an income tax return to the
8 Director of the Brookhaven Internal Revenue Service
9 Center, Holtsville, New York, in the Eastern District
10 of New York, stating specifically the items of his
11 gross income and any deductions and credits to which he
12 was entitled; that well knowing all of the foregoing
13 facts, he did willfully and knowingly fail to make
14 said income tax return to the said Director of the
15 Internal Revenue Service Center, or to any other proper
16 officer of the United States."
17

18 The statute involved in those two charges, the
19 failure to file charges will be as follows:

20 Section 7203 of title 26:

21 "Any person required . . . by this title or
22 by regulations made under authority thereof to make a
23 return, who willfully fails to make such return, . . .
24 at the time or times required by law or regulations,
25 shall, in addition to other penalties provided by law,

1 be guilty of a misdemeanor"

2 The elements of that crime are three.

3 First, that the defendant was a person required
4 by law to file a return.

5 Second, that he failed to file a return by the
6 time required by law.

7 Third, That it was a willful failure.

8 The prosecution has to satisfy you beyond a
9 reasonable doubt that he committed each one of these
10 elements. Again, there does not appear to be any con-
11 tention that the defendant was not a person required
12 to file a return in 1971 or 1973. Section 6012(a)(1)
13 of title 26 of the United States Code states that every
14 individual have a gross income of \$600 or more in a
15 taxable year is a person required to file an income
16 tax return.

17 The Government claims the defendant actually
18 earned approximately \$32,000 in 1971 and approximately
19 \$78,000 in 1973. Obviously, far in excess of \$600,
20 if they are right.

21 That return has to be filed by April 15th of
22 the succeeding calendar year. So that the 1971 return
23 had to be filed by April 15th and the Government must
24 prove that the return was filed after April 15th of
25

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1972.

An extension was requested for the 1973 return and the extension expired on June 15, 1974. Again, we all know that people sometimes fail to file their returns on time. It is not a crime to do so. The question is, was there a knowing and willful failure.

I have already explained the meaning of those terms. If you find that Mr. King did not file a return for 1971 or for 1973 when he did so, but that his failure was not knowing and willful, you must find him not guilty on both these counts. The question is what was his intention if he failed to file on time.

The next two counts, three and five, are attempts to evade an income tax charge. Count three alleges that:

"During the calendar year 1971, Francis E. King, the defendant, a resident of Commack, New York, had and received a taxable income of approximately Twenty Three Thousand Six Hundred Ninety Seven Dollars and Sixty One Cents (\$23,697.61); that upon said taxable income he owed to the United States of America income tax in the amount of approximately Five Thousand Five Hundred Sixty Three Dollars and Twenty Four Cents (\$5,563.24); that he was required by law on or before

15 1 April 15, 1972 to make an income tax return to the
2 Internal Revenue Service, and to pay such income tax;
3 that well knowing the foregoing facts, the said
4 FRancis E. King, on or about April 15, 1972, in the
5 Eastern District of New York, did willfully and know-
6 ingly attempt to evade and defeat the said income tax
7 due and owing by him to the United States of America
8 for said calendar year by failing to make such income
9 tax return to the said Internal Revenue Service, and
10 by failing to pay said Internal Revenue Service said
11 income tax and by concealing and attempting to conceal
12 from all proper officers of the United States of
13 America his true and correct taxable income."

14 Count five states:

15 "During the calendar year 1973, Francis E. King,
16 the defendant, had and received a taxable income of
17 approximately Seventy Thr-e Thousand Two Hundred
18 Eighteen Dollars and Forty Cents (\$73,218.40); that
19 upon said taxable income he owed to the United States
20 of America income tax in the amount of approximately
21 Twenty Nine Thousand Four Hundred Ninety Dollars and
22 Twelve Cents (\$29,490.12); that he was required by law
23 on or before April 15, 1974 to make an income tax
24 return to the Director of the Brookhaven Internal
25

16 1 Revenue Service Center, Holtsville, New York, in the
2 Eastern District of New York, and to pay such income
3 tax; that well knowing the foregoing facts, the said
4 Francis E. King, on or about April 15, 1974, in the
5 Eastern District of New York, did willfully and know-
6 ingly attempt to evade and defeat the said income tax
7 due and owing by him to the United States of America
8 for said calendar year by failing to make such income
9 tax return to the said Internal Revenue Service, and
10 by failing to pay said Internal Revenue Service said
11 income tax and by concealing and attempting to conceal
12 from all proper officers of the United States of
13 America his true and correct taxable income."

15 This is a violation, if it occurred, of section
16 7201 of title 26, which reads as follows:

17 "Any person who willfully attempts in any manner
18 to evade or defeat any tax imposed by this title or
19 the payment thereof shall, in addition to other
20 penalties provided by law, be guilty of a crime."

21 Again, you have to find three things beyond a
22 reasonable doubt:

23 First, that a substantial amount of Federal
24 income tax was due and owing to the Government.

25 Second, that the defendant in fact knew that a

substantial amount of tax was due and owing.

Third, that the defendant willfully and knowingly did an affirmative act to evade or defeat the amount of tax due and owing, with the specific intent to defraud the Government of such additional tax.

Again, we all know people do not, from time to time, pay their taxes. The question is the intention, that this is a criminal matter.

You have to find that there was a substantial amount of taxes due for the years 1971 and 1973, each year, of course, being taken up separately. It is not necessary that the Government prove an evasion of all the taxes. It is sufficient if a substantial amount of taxes was attempted to be defeated and evaded.

Again, it is not a defense that ultimately the tax was paid. It is the question of what his intention was when those tax returns were filed or should have been filed.

I have already told you what willfulness means and what intention means. Here, it has to be willful and knowing in an attempt to evade the tax. He has to voluntarily and intentionally, with a specific intent to keep from the Government a tax imposed by the tax law as to these facts.

(Continued on next page.)

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1
2 You have to have a deliberate attempt to mislead
3 the Government through a failure to file a tax return
4 or through other forms of concealment.

5 Now, in addition to his plea of not guilty as
6 to all of those six counts, Mr. King has raised a
7 legal defense -- and he is entirely entitled to do
8 so -- it is entirely proper for him to do so -- with
9 respect to Count 2, the failure to file in 1971 and
10 Count 3, attempting to evade the tax in 1971.

11 He claims that these charges cannot properly
12 be tried in this particular Federal court in the
13 Eastern District of New York because he neither lived
14 within the district during 1971 nor was he required
15 to file a tax return within this district.

16 The law requires that a criminal case be tried
17 within a district which bears some fair and rational
18 relationship to the crime or crimes charged and
19 obviously the reason for that is clear. The Government
20 cannot call you from one part to another. It has
21 to try you at a place which has some connection with
22 the crimes charged or with you.

23 Now, the burden of proving that relationship
24 is on the Government. The Government has to prove it.
25 Unless you find that the Government has proven, by a

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preponderance of the evidence, that Mr. King was legally a resident within the Eastern District of New York -- and that includes the whole of Long Island and Staten Island including Suffolk -- at the time he was supposed to file a 1971 return, that is, on April 15, 1972, you must acquit him of this charge. You don't have to say why you are acquitting him, you just have to acquit him.

The Government has to show this by a preponderance of evidence. That means, it must appear from the testimony and exhibits that the fact at issue is more likely true than not.

Now, you remember what I told you about beyond a reasonable doubt. So, it is obvious that this standard, the burden of proof on the Government, as to the venue, is not as high as the beyond a reasonable doubt standard required with respect to the elements of the crime I have explained to you. Nevertheless, the burden of persuasion is on the Government. This is only as to counts 2 and 3, the venue issue. You need not consider it in relation to any other counts in the indictment for technical reasons that I don't have to explain to you. So, the venue issue only comes up on Counts 2 and 3.

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To find that Mr. King was a resident in the Eastern District on April 15, 1972, the date the return was to be filed, you need not find that he lived there at all times -- in this District. You must find, however, that he intended to treat the Commack residence as his permanent and official residence.

The Government has presented evidence that the Commack address appeared on documents. The Government and defendant have stipulated that Mr. King's name was listed in the telephone directory with the Commack address and that he had no other listing. You heard other evidence, both documentary and testimonial, that Mr. King resided in the Bronx or Westchester at the crucial time.

There is evidence that Mr. King reported a separation to the Police Department in June 1971 and signed a separation agreement on March 20, 1972. It is up to you to weigh all the evidence carefully and to decide whether the Government has met its burden of persuasion by a preponderance on this venue point.

If there was no venue as to Counts 2 and 3, if there was no venue, acquit on those counts. It might be best to decide that question first and then

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you can do all of the other counts or if you decide there is venue then do Counts 2 and 3 on the same standard of beyond a reasonable doubt.. However, you do whatever you feel is most convenient. It is up to you.

There is no question as to venue on Counts 1, 4, 5 and 6.

Obviously, a difficult aspect of your duty is to determine the credibility of witnesses, to weigh their testimony.

In weighing their testimony you may consider the relationship of the witnesses to the Government or to the defendant, the witnesses' bias or interest in the outcome of the case, his or her manner while testifying, candor or intelligence, the extent to which the witness' testimony is corroborated or contradicted, inconsistencies, whether there has been a change in testimony under cross-examination and the like.

If you believe that a witness has willfully sworn falsely before you with respect to a material element of the case you may disregard his or her testimony in whole or in part. But remember that a person may be mistaken about details here or there and

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other details may be accurate. So, you have to decide and select what part you want to believe and how you want to put it all together.

Do not give any greater weight or credibility to a person just because he was an employee of the Government. Everybody has to be individually examined and have his or her credibility weighed.

Sergeant White testified. He is a self-confessed criminal. If you believe Sergeant White was induced to testify in this case by a promise of immunity or by holding out any hope that he would be rewarded, if he, in any way implicated this defendant, then you have to consider it. That could have a great deal of weight in determining his credibility, in determining whether he was a criminal and therefore might have lied more readily, whether he was testifying because he expected that the Government would give him some benefit if he gave favorable testimony.

The law does not prohibit the use of immunity which the witness has described and whether you approve or disapprove of what was done for Sergeant White is not the issue. The question is whether you believe him.

Prior instances of perjury may be considered

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in determining whether a statement made on the witness stand or a hearsay statement -- remember, I told you about some hearsay statements in the course of the testimony -- is true.

There has been a number of experts called in this case.

An expert is entitled to give his conclusions and opinions because of his experience or his education or profession.

You can consider the opinion of the experts and treat them like any other witnesses. If you think they were telling the truth and helpful to you, you can believe them. If not, you can reject their testimony.

Your recollection governs. If you have any specific questions, if you want any testimony read back, try to be very precise, please, and we will try to find what you want. I know it is hard to keep all of this in mind. We have most of it typed up and we will try to be helpful but do try to avoid, if you can, asking for an awful lot you don't need to be read back. Obviously, we do not want to read back the whole trial. However, whatever you want, don't be embarrassed to ask for it and we will do what we

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can to help you.

If you want all or some of the documents, send me a note and whatever you want you can have.

Would you like me to send in, right at the start, the indictment?

(Jurors indicating the affirmative.)

THE COURT: Any objection to that?

MR. COHEN: No objection.

MR. PUCCIO: No objection.

THE COURT: I will give that to the clerk and he will give it to the marshal.

If you want any more help on the law, send in a note and tell me what is troubling you and I will try to be helpful.

Each of you is entitled to your own views and opinions but you should exchange your views carefully and -- I'm sure you will -- respectfully with each other. Somebody else may be right and have an argument or remember something you don't and that may be helpful in changing your mind.

Remember, in the final analysis, each of you is responsible for the verdict that is delivered. That verdict has to be unanimous.

You can come in with individual verdicts as to

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each count or come in all together; whichever you prefer.

Your oath sums up your duty and that is, without fear or favor to any person you will well and truly try the issues that I have just presented to you and that are charged in the indictment according to the law and the evidence.

Is there any objection to my excusing the two alternates?

MR. CONN: No.

MR. PUCCIO: No.

THE COURT: The two alternates are excused. Get your things, please. Check out. You are through for the week. You don't have to report again.

I don't want you to discuss this with each other or anybody else -- nobody else. Don't say a word about this case until the verdict is in. Is that clear? You are not to discuss this with anyone until the verdict is in. There are two people who may want to question you. You may make arrangements to do it at any other time but not until the verdict is in. Is that clear?

(Alternate jurors 1 and 2 indicate the affirmative.)

(Whereupon alternate jurors 1 and 2 exited

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THE COURT: Counsel wish to see me side bar?

MR. COHN: Yes, your Honor.

THE COURT: I will see you.

(Side bar discussion between Court and counsels follows.)

MR. COHN: Excuse me, Judge, who are the two people?

THE COURT: Apparently, they are doing a survey for Brooklyn College Law school.

MR. COHN: It sounded so mysterious.

Perhaps if you explained it to the jury --

THE COURT: If you want me to.

MR. PUCCIO: Yes.

(Conclusion of side bar discussion.)

(Following held in open court.)

THE COURT: Ladies and gentlemen, they are doing some jury surveys to determine how jurors are treated and things like that. That is why I made that reference. Don't bother about it. You don't have to explain any thing to anybody at any time.

You go in and do what you have to do --

JUROR NUMBER ONE: May we have a listing of all of the evidence that has been submitted?

THE COURT: What do you mean, listing?

1 JUROR NUMBER ONE: Somebody may have a question
2 or doesn't remember a certain sequence of events.

3 MR. COHN: She wants a list --

4 THE COURT: The exhibit list?

5 JUROR NUMBER TEN: A listing of all of the
6 evidence that was submitted.

7 THE COURT: You mean the exhibits or the
8 testimony?

9 JUROR NUMBER TEN: Evidence. A listing of all
10 of the things we have to peruse to decide the case.
11 Isn't there a listing like that?

12 THE COURT: We will make it up for you.

13 JUROR TEN: Isn't there one everybody was
14 working with?

15 THE COURT: It contains changes -- you want a
16 check list of all of the documents?

17 JUROR TEN: Well, then we'll know what number
18 it is and how to go through it. There is so much here
19 to go through.

20 THE COURT: Send out a note and we will try
21 to put something together for you.

22 It may be a handwritten document. There have
23 been changes back and forth and things have come in and
24 were then taken out and things have not come in and the
25 numbers are not in sequence and the like.

1 (Side bar discussion between Court and counsel
2 as follows:)

3 MR. COHN: I object to your Honor advising
4 them at the start that you will take partial verdicts.
5 I didn't see that in the charge. It may be routine but
6 I object to it.

7 THE COURT: What right do you have to object
8 to it?

9 MR. COHN: Partial verdicts are generally --
10 although the Court has discretion to take them at
11 any time -- after deliberations have gone on for a
12 while.

13 The problem is, if they reach a partial verdict
14 and wish to change it they cannot recall it or they
15 will think they cannot.

16 I object.

17 THE COURT: Do you want me not to take partial
18 verdicts?

19 MR. PUCCIO: No. The rules provide for it and
20 I suggest your Honor not change the charge. It seems
21 customary to do that.

22 THE COURT: Anything further?

23 MR. COHN: No.

24 THE COURT: Swear the marshals please.

25 (Whereupon two deputy United States Marshals were

1 sworn by the Clerk of the Court and 5:05 p.m.)

2 THE COURT: Give the foreperson paper, pencils
3 and the indictment.

4 Retire now to consider your verdict.

5 (Jury excused for deliberation at 5:05 p.m.)

6 (The following occurred in the absence of the
7 jury.)

8 MR. COHN: Your Honor, giving your rulings on
9 the jury's recollection controlling, I didn't see
10 fit to bring this up at the time with a further
11 interruption but there was a substantial misstatement
12 in regard to the furniture purchases in 1970 by Mr.
13 Puccio.

14 Mr. Puccio said that the furniture purchases
15 came at the same time or after the Loo transaction --
16 you know what I mean -- that White testified too.

17 In fact, the records indicate quite otherwise.
18 that they came well before and I did not have an
19 opportunity to respond to that, obviously, since it
20 was in the Government's rebuttal.

21 THE COURT: You could have responded by
22 calling my attention to it and I would have corrected
23 it.

24 MR. COHN: Everytime I did that you said the
25 jury's recollection will prevail so I thought I would

1 rather not give the appearance of interrupting again
2 for no purpose.

3 THE COURT: That is your tactical choice. You
4 know when you have something important to bring to
5 my attention you should bring it to my attention.

6 MR. PUCCIO: I have an exhibit list on the
7 machine. I can update it and remove the exhibits not
8 received. This only includes -- we can have it done
9 very quickly, your Honor, possibly.

10 MR. COHN: We can do it and check it against
11 the exhibits and that's fine.

12 MR. PUCCIO: In addition, I have a list some-
13 where of witnesses which can also -- we can delete
14 the witnesses we didn't call.

15 THE COURT: If you agree on it.

16 MR. PUCCIO: We don't have defense exhibits
17 included here so counsel has to make up a list of his
18 own.

19 THE COURT: We have it here.

20 MR. COHN: One of the exhibits I put in was a
21 photostatic copy of two checks, front and back. Either
22 I lost that copy or the markings seem to be lost on that
23 so I would like to refer to the witness list and get it
24 and remark it.

25 I discussed this with Mr. Puccio before --

SLOTNICK

AFFIDAVIT OF PERSONAL SERVICE

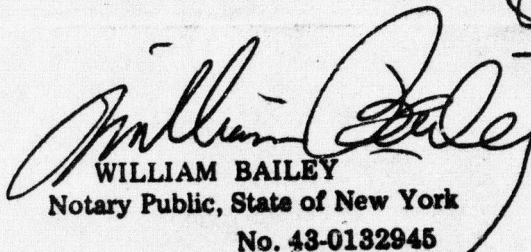
STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 17 day of June, 19 77 at No. 225 Cadman Plaza East, Brooklyn, NY

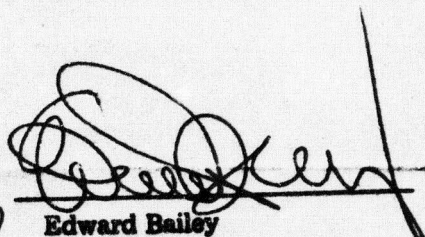
deponent served the within Appendix
upon U.S. Atty. East. Dist. of NY

the Appellee herein, by delivering 1 true
copy(ies) thereof to him personally. Deponent knew the person so
served to be the person mentioned and described in said papers as the
Appellee therein.

Sworn to before me this
17 day of June 1977.


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945

Qualified in Richmond County
Commission Expires March 30, 1978


Edward Bailey